



**DEPARTMENT OF FAIR EMPLOYMENT  
AND HOUSING  
*ENFORCEMENT DIVISION*  
*DIRECTIVE***

**DIRECTIVE  
NUMBER  
209**

**DISTRIBUTION  
DATE  
October 1, 1998**

1. **SUBJECT: RETALIATION COMPLAINTS**
2. **PURPOSE:** To set forth the procedures for processing retaliation complaints.
3. **BACKGROUND:** There are occasions when a claim of retaliation will be included in a charge of discrimination with other allegations, be filed separately, or be an amendment to an original complaint. The procedures for drafting retaliation complaints are described below.
4. **PROCEDURES:**

**A. Retaliation Alleged At Intake:**

When a complainant alleges several acts of harm during intake, one of which includes retaliation, the allegations should be combined into one complaint.

**Example:** Complainant alleges she was sexually harassed and terminated in retaliation for objecting to the harassment.

**B. Retaliation Alleged After Complaint Filed:**

- 1) When a complainant with an existing Department of Fair Employment and Housing (DFEH) complaint alleges retaliation, a separate retaliation complaint will be filed. Amending the existing charge may shorten the period for investigating the new allegations as well as shorten the statute of limitations for issuing an accusation on the retaliation allegation.

**EXCEPTION:** The original complaint should be amended **only** when retaliation is alleged in relation to the same personal harm which gave rise to the first complaint AND 12 months has elapsed since the personal harm occurred. For instance,

Six (6) months after an employee is terminated he/she files a DFEH complaint based on National Origin discrimination. The harm included differential treatment and termination. Seven (7) months after filing the original complaint (which is now 13 months after the complainant was terminated), the complainant wants to

file a retaliation complaint and asserts that the termination was in retaliation for protesting the different treatment. A separate retaliation case will not be filed. The existing complaint must be amended since the termination occurred over 13 months ago and is no longer jurisdictional as a new complaint.

- 2) Where a retaliation complaint is filed which evolves from a prior DFEH complaint, the case may be designated as a "priority" case. (Refer to Directive 202, "Priority Processing," for guidance on processing priority retaliation complaints.) Where the retaliation case is designated as a priority and the original complaint is still open, the original complaint will be investigated at the same time as the priority retaliation complaint, even if it results in investigating the case out of order.

5. **APPROVAL:**

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Nancy C. Gutierrez, Director

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Date